

Turning the Camera on Court TV: Does Televising Trials Teach Us Anything About the Real Law?

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I. INTRODUCTION

What people think about the law is important because ours is a “public opinion” society, “which makes heavy use of referenda, and in which government does not lift a finger or move a muscle without reading the tea leaves of public desire.”¹ The public’s perception of justice influences the courts, the laws, the judges, and essentially the democratic process. So what influences the public’s perception of justice? Television. For the majority of Americans, television is the most important source of information, and for many it is the only source of information.² This is particularly true when it comes to gathering information about the law.

Because the majority of Americans have had no personal experience with the legal system,³ and because the majority of Americans get their information about the world solely from television,⁴ the portrayal of justice on television is extremely important not only to the continued viability of the legal system, but also to the individual’s understanding of that system. Studies indicate that the

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¹ David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 796 (1993) (quoting Lawrence Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L. J. 1579, 1597 (1989)). Friedman believes that the portrayal of the legal system in popular culture is important “because it ultimately helps shape the legal culture, which in turn influences the law itself.” *Id.* at 796.

² See Elliot E. Slotnick, *Television News and the Supreme Court: A Case Study*, 77 JUDICATURE 21, 22 (1993) (explaining that most Americans report that television is their main or only source of news and information); see also Brian Lowry, *In King Trial Wake, News Media Will Be the Message*, DAILY VARIETY, Apr. 7, 1993 (reporting a study conducted by the Roper Organization which indicates that “69% of Americans, the highest percentage yet, view television as their primary source of news and information”).

³ “Since most people have little or no personal experience with the criminal justice system, they know only the system’s appearance.” Harris, *supra* note 1, at 788–89. “Many people dislike and distrust the legal system because they don’t understand it,” believes Steve Brill, Court TV’s founder and former CEO. See Charles B. Camp, *A Courtroom with a View*, DALLAS MORNING NEWS, Apr. 4, 1993, at 1H.

⁴ See *supra* note 2 and accompanying text.

majority of the information television viewers get about the legal system comes not from news,⁵ but from entertainment programming like *Perry Mason*, *L.A. Law*, *Law & Order*, and *Matlock*.⁶ Research shows that this information makes a big difference in the way people perceive not only the courts and the legal system, but also the world around them.⁷ If the appearance of justice matters, then what people see on television matters. It is troubling that Americans' perspectives on the legal system comes from television programs that may convey false and misleading information about the legal system.⁸

In July of 1991, the Courtroom Television Network ("Court TV")⁹ set out to change all that by introducing American cable subscribers to a completely new source of information about the legal system. The network was unlike

⁵ Even though news programs are aimed at informing rather than entertaining, the portrayal of the criminal justice system on the nightly news often suffers from incompleteness. Newscasts show the highlights of important trials without explaining the issues or why the issues are being resolved in a particular fashion. Further, the scripts are often written by anchors and producers who are not schooled in the law and may not understand the legal issues well enough to explain them to the viewing audience or even well enough to know which issues are most relevant to the community. See Harris, *supra* note 1, at 811.

⁶ The depiction of lawyers in popular culture is important because pop-culture lawyers may be the only ones most Americans know. For instance, a 1993 poll reported by *The National Law Journal* indicated that among the 12 attorneys the public most admired, two are television characters—Andy Griffith's *Matlock* and Raymond Burr's *Perry Mason*. Further, in the heyday of *The People's Court*, more Americans recognized Judge Wapner's name than could recall the name of any Supreme Court Justice. See Thom Weidlich, *A Cynical Age Sees Few Heroes in Its Lawyers*, NAT'L L.J., Nov. 29, 1993, at S26.

⁷ See Harris, *supra* note 1, at 797. But cf. Fred Graham, *Keynote Address: The Impact of Television on the Jury System: Ancient Myths and Modern Realism*, 40 AM. U. L. REV. 623, 626 (1991) (explaining that television is not having the strong impact that judges and some lawyers thought it was; in fact, television has become less a factor in influencing viewers). "[T]he public seems to be increasingly distracted and unimpressed with what it sees on television" *Id.* at 628.

⁸ For a thorough discussion of the misrepresentations made about the legal system in popular entertainment programming, see Harris, *supra* note 1. For a discussion of the intersection of popular culture and the law, see Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579 (1989). "[T]elevision would shrivel up and die without cops, detectives, crimes, judges, prisons, guns and trials . . . [P]opular culture, as reflected in the media, is not, and cannot be taken as, an accurate mirror of the actual state of living law." *Id.* at 1588.

⁹ See *infra* notes 13-23 and accompanying text. Joshua Lazerson is not sure what to make of the Courtroom Television Network: "Is it the late 20th century moral equivalent of Roman coliseum fare, or is it of potential interest and value to those seeking to improve public awareness and understanding of law and the legal process?" Joshua Lazerson, *Court TV: Can It Increase Understanding of the Law and the Legal Process?*, 76 JUDICATURE 57, 57 (1992).

anything that had come before it. By providing live, unedited coverage of trials from across the nation, Court TV—as the network is more popularly known—gives viewers a firsthand look at how cases are tried and resolved in this country. Steve Brill, the brains behind Court TV, created the new cable channel with two goals in mind: Court TV would not only entertain viewers with real-life legal drama, but would teach them something about the judicial system in the process.¹⁰ Brill believed that after watching the legal system in action, viewers can evaluate its strengths and weaknesses more intelligently.¹¹

Not everyone agrees with Brill. While critics concede that Court TV provides a more accurate and comprehensive picture of the justice system than anything previously offered on television, they argue that the picture is far from perfect, and that in many ways, Court TV is as misleading as any prime time legal drama.¹²

Are the critics correct? Is Court TV failing in its attempt to educate the American public about the legal system? This Comment will focus on these questions and on the larger issue of whether televising trials like the O.J. Simpson murder trial is actually making a difference in the way people perceive the courts, the legal system, and the world around them.

Part II of this Comment will explore briefly the history of Court TV and Steve Brill, its founder, while Part III will focus on the controversy surrounding Court TV. One hundred and twenty randomly selected adults who watched at least a portion of the O.J. Simpson trial on television were surveyed anonymously for this Comment to determine whether Court TV is fulfilling its mission to educate the public about the law. The results of that survey will be discussed in Part III, while Part IV places this discussion of Court TV in the larger context of whether cameras belong in the courtroom at all. Part IV will focus on the historical battle over televising trial proceedings as well as how having the camera in the O.J. Simpson courtroom has reignited that battle.

¹⁰ See Court TV, *Courtroom Television Network: Watching the Real Life Drama of Justice* (Court TV in-house publication 1995) (on file with author) [hereinafter *Watching the Real Life Drama*].

¹¹ See *id.* But cf. Charles B. Rosenberg, *The Law After O.J.*, available in 1995 WL 314643, *1 (O.J. Comm.) (“Otto von Bismarck, the first German chancellor, once remarked that there are two things people should never watch being made: law and sausage.”).

¹² Court TV is only a representation of the criminal justice system. It may indeed be more accurate in significant ways; it may be clearer and easier to understand; it may have real potential to increase knowledge and understanding of the legal system. The fact remains, however, that Court TV must select and weave together its own story of the criminal justice system, its own narrative of what the system does, and its own account of how it functions and why. This aspect is where the potential to mislead arises. See Harris, *supra* note 1, at 820–21.

Finally, Part V will conclude this Comment with recommendations for how Court TV can become a better educational tool.

II. HISTORICAL BACKGROUND OF COURT TV

A. *What Is Court TV?*

Court TV¹³ is a twenty-four hour basic cable television service that provides live and taped coverage of the nation's most important and compelling trials to approximately twenty-seven million American households.¹⁴ Viewers of the network listen to expert commentators explain the trial proceedings and the legal issues of a particular case. The network uses on-screen graphics¹⁵ to help viewers keep track of the action. The graphics help viewers understand the complex legal process as it unfolds before their eyes by reporting who is on the stand, what case is airing, and what the important legal issues are. Network officials believe that by intersplicing unedited coverage of trials with expert commentary and on-screen graphics, Court TV will educate viewers about the judicial system while entertaining them.¹⁶

¹³ While this Comment will focus on "Court TV" explicitly during the course of the Simpson trial, many individuals surveyed for this Comment did not actually watch coverage of the trial on Court TV, but watched it on CNN or another major network. Because these networks provided viewers with unedited "gavel-to-gavel" coverage of the action interspliced with expert commentary, just as Court TV does, it is virtually irrelevant whether the public watched the Simpson trial on Court TV or on CBS. The viewer was left with essentially the same information regardless of the source.

¹⁴ See Court TV, 6 *Court TV in Session* 3 (Fall 1996) (on file with author) [hereinafter *Court TV in Session*]; see also *Watching the Real Life Drama*, *supra* note 10. Court TV's programming has expanded beyond trial coverage to include a diverse schedule of legal-themed news and talk programs. "Court TV's programming is extended through its Court TV Law Center service on the Internet, a daily syndicated broadcast TV show, a radio service, educational products, and book publishing ventures." *Court TV in Session*, *supra*. In addition, Court TV "recently launched Teen Court TV, a weekend programming block for young people." *Id.* Court TV's audience has grown significantly in the past five years. Less than four million U.S. households subscribed to the network in 1991, its first year in operation, while today, about 27 million homes receive the channel. See *id.*; see also Laura Castaneda, *In the Spotlight: O.J., Other High-Profile Cases Benefit Court TV, but Controversy over Televised Trials Is Renewed*, DALLAS MORNING NEWS, Oct. 22, 1995, at 1H.

¹⁵ A typical graphic reads: "Bob Jones, an eyewitness for the State, is being cross-examined by the defense attorney who is trying to undermine Jones' credibility by showing that he has bad vision."

¹⁶ Joshua Lazerson notes:

What is discovery? How does one define reasonable doubt? What is the burden of proof

In most viewing areas, Court TV comes as part of a basic cable plan.¹⁷ The network's mainstay is daily live coverage from inside the nation's courtrooms. In accordance with courtroom "business hours," Court TV broadcasts "gavel-to-gavel" coverage Monday through Friday from about 8:30 a.m. until 8:00 p.m. Eastern Standard Time.¹⁸ Since its debut on July 1, 1991, Court TV has covered over five hundred trials and hearings. When Court TV is granted permission to televise trial proceedings like the Menendez brothers murder trial,¹⁹ the network attempts to be as unobtrusive as possible.²⁰ Consequently, the lighting and the sound are not always of the highest quality, which makes the proceedings seem less polished and professional than the courtroom scenes in prime-time legal dramas. This unpolished look is part of the attraction; viewers get the sense that they are watching "the real thing." Additionally, the network does a good job of capturing the reality of courtroom drama—long on

and upon whom does it fall, and when? What are the purposes of a judge's instructions?

. . . The commentators [on Court TV] not only define aspects of law and legal process, they do so in the "midst of the game." In this way, law comes to life; it becomes a living, breathing matter of debate and arguments and human judgment bolstered by the edifice of that which has come before. And that, succinctly put, can be very interesting.

Lazerson, *supra* note 9, at 57.

¹⁷ Court TV is currently available in some 27 million cable and satellite-dish households in 48 states, the District of Columbia, Puerto Rico, and the Virgin Islands. *See Court TV in Session*, *supra* note 14; *Watching the Real Life Drama*, *supra* note 10.

¹⁸ Because Court TV is a 24-hour network, the hours not filled with live courtroom coverage are filled with taped programs featuring legal news, selected trial highlights, viewer call-in segments, and the like. Occasionally, Court TV will depart from its regular courtroom schedule to offer special programming like the Senate confirmation hearings of Supreme Court Justice Clarence Thomas or the QVC/Paramount Viacom takeover fight. *See id.*

¹⁹ *See generally* Menendez v. Superior Court of Los Angeles County, 834 P.2d 786 (Cal. 1992) (analyzing the psychotherapist-patient privilege asserted in the case). Erik and Lyle Menendez, two Beverly Hills teenagers, were tried twice and eventually convicted of murdering their parents, Jose and Mary Louise Menendez. *See State v. Menendez*, 1996 WL 121110 (Cal. Super. Trans.) (providing a transcript of the reading of the verdicts in the case). The brothers have been sentenced to life imprisonment. *See State v. Menendez*, 1996 WL 363705 (Cal. Super. Trans.) (providing a transcript of post-trial motions and sentencing in the case).

²⁰ Forty-seven states allow cameras in the courtroom. *See* Massimo Calabresi, *Swaying the Home Jury*, TIME, Jan. 10, 1994, at 56. The long-running debate over cameras in the courtroom dictates that those who televise trial proceedings do so in the most unobtrusive manner. When the debate began in the 1950s, many opponents argued that cameras would take up too much room, and that the bright lights and miles of cable and wire would be too distracting for the jurors. *See infra* notes 91–102 and accompanying text.

pauses and repetition and slow on delivering the big punch.²¹ Unlike *L.A. Law*,²² where cross examination is always scintillating and never monotonous, Court TV is tedious. "It has all the pizzazz of a pair of orthopedic shoes. When there is drama or excitement, it emerges from context and content, not production values."²³

B. *The Brains Behind the Network*

Court TV is the brainchild of Steve Brill,²⁴ a journalist who graduated from

²¹ Joshua Lazerson provides the following analogy:

Watching *Court TV* for a protracted period of time is much like chewing gum: the first time we do it, we notice that the flavor is lost quickly Even with the most horrific crimes as a basis, the novelty of being inside a courtroom, of casting one's gaze upon the accused and accuser, of witnessing real human interaction and emotion through television's one-way mirror, will wear off quickly.

Lazerson, *supra* note 9, at 57.

²² *L.A. Law* was introduced by NBC in the 1980s. The hour-long drama focused on the professional lives and loves of a group of lawyers from the fictional Los Angeles law firm McKenzie, Brackman. In a dramatic departure from real life, every case these lawyers handled involved complex social and legal issues pulled directly from the current headlines. The cases almost always went to trial, the lawyers were always clever and classy in the courtroom, the trials were always resolved by the end of the show, and the "good guys" always seemed to win. As Professor Stephen Gillers has said, the show was "[o]ne part 'L.A.' and one part 'Law.'" Stephen Gillers, *Taking L.A. Law More Seriously*, 98 YALE L.J. 1607, 1607 (1989).

Lawrence Friedman describes *L.A. Law* as follows:

L.A. Law is a massive distortion of reality: lawyers snicker at it; many of them despise it. It conveys, in many ways, the same message as the *Perry Mason* shows, with somewhat more complexity, and with a soap-opera format. The lawyers on *L.A. Law* are interesting people who lead glamorous, colorful lives, and who deal with one fascinating *human* problem after another Most viewers, perhaps, are aware (at least dimly) that the worklife of a lawyer cannot possibly be so exciting

Friedman, *supra* note 8, at 1600.

²³ Harris, *supra* note 1, at 803 (citation omitted).

²⁴ "[P]rior to founding *The American Lawyer* [magazine] in 1979, [Brill] was a columnist and writer for *Esquire* and *New York* magazines and the author of the 1978 best selling book, *The Teamsters*." *Watching the Real Life Drama*, *supra* note 10. Brill has earned a reputation as a talented but difficult journalist. He reportedly used to ask writers, "Is English your second language?" See Castaneda, *supra* note 14. Terry Moran, a Court TV anchor, says Brill "has a charisma around here that is made up partly of what he's

both Yale College and Yale Law School. Brill, who long ago decided he would rather observe lawyers than be one, came up with the idea for the "all-court-all-the-time" network while riding in a New York City taxicab in 1989. Cruising through the streets of Manhattan while listening to a radio account of a local trial, Brill realized that many riveting courtroom tales go unreported. In a moment of inspiration, Brill envisioned that television presented the perfect format to tell these tales.²⁵ Brill approached Steven Ross, former chief executive of Time Warner, about his idea for courtroom television. Ross not only bought his idea,²⁶ but bought American Lawyer Media, Brill's company that publishes magazines aimed at attorneys. Brill served as CEO of Court TV for six years. He resigned as CEO in February of 1997 and sold his share of American Lawyer Media and his Court TV partnerships to Time Warner.²⁷

In the days before Court TV, most Americans learned second-hand about what happened in important trials—from newspapers, radio broadcasts, movies, docudramas, and television newscasts.²⁸ And "while reporting can be valuable

accomplished, partly out of fear because he can be somewhat unpredictable, and partly because he's a good journalist." *Id.*

²⁵ See Camp, *supra* note 3.

²⁶ Tom Shales, the *Washington Post's* television critic, had this to say about Court TV: "I wish it were like C-Span, without the commercial breaks. You know, 'Before we go to today's murder trial, here's Art Linkletter with a word on life insurance.' I think it lacks dignity." John Strahinich, *Court TV's Rising Star*, BOSTON GLOBE MAG., Mar. 19, 1995, at 24, 37. Shales conceded that, on the whole, Court TV was doing a public service, and that at times, it could be "damn interesting." "They're doing a better job of covering O.J. than CNN," Shales said. *Id.*

While Court TV has been criticized for airing commercials which distract from its educational focus, executives at the network maintain that they will refuse to televise ads that are deemed distasteful. Steve Brill says he could have cashed in during O.J. Simpson's trial but chose not to do so. He turned down an ad from the Florida Department of Citrus, which wanted to run spots for "O.J." during the trial.

"I don't think that makes me a great person or a martyr," says Brill. "I think it makes me a smart business person. What I'm trying to do is build our brand name. I want people to turn to us when something important is going on. We want people to respect us."

Castaneda, *supra* note 14.

²⁷ *Time Warner to Sell its Interest in American Lawyer Media and Counsel Connect, Time Warner and Steven Brill to End Partnership* (Corporate Communications, Time Warner Inc., Feb. 19, 1997) (on file with author). "Thayer Bigelow, president and CEO of Time Warner Cable Programming, will ultimately assume the role of CEO of Court TV, reporting to Ted Turner." *Id.*

²⁸ "It is a sorry state of affairs that today most of us learn about judicial proceedings

in helping to sort out issues," Court TV believes reporting "cannot replace the understanding gained from viewing actual courtroom proceedings."²⁹ Court TV's goal is to "substitute real law for *L.A. Law*"³⁰—to simultaneously entertain and educate the American public about the justice system by televising trials from all over the country.

C. Court TV's Road to Becoming the Courtroom News Leader

Court TV's first highly publicized attempt to teach the public about the criminal justice system came in December of 1991, when the network offered full coverage of the rape trial of William Kennedy Smith from Palm Beach County, Florida.³¹ From the moment rape allegations were made against a member of America's "royal family," the American public became obsessed with the case. Court TV seized the moment. Even though the nation's fixation with the case had less to do with the legal issues involved and everything to do with the players involved, the case against William Kennedy Smith presented Court TV with a golden opportunity to raise public consciousness about the criminal justice system while raising its own ratings in the process.³² The payoff was extraordinary. As Court TV was the only network broadcasting live, unedited coverage of the trial proceedings, millions of Americans who were starving for information about the case tuned into Court TV for the first

from lawyers' sound bites and artists' sketches,' says Vincent Blasi, a law professor at Columbia University. "Televised proceedings ought to dispel some of the myth and mystery that shroud our legal system.'" Richard Zoglin, *Justice Faces a Screen Test*, TIME, June 17, 1991, at 62.

²⁹ *Watching the Real Life Drama*, *supra* note 10.

³⁰ *Id.* See also Gillers, *supra* note 22, at 1612, 1618 (noting that *L.A. Law* may present inaccurate views of trials, the practice of law, and the lives of lawyers, but the show does a great job of presenting the moral and ethical issues lawyers face daily in the practice of law); Weidlich, *supra* note 6, at S26. The public has become more sophisticated about the law—perhaps because of the medium itself. Since the late 1970s the legal language used on television has become much more advanced. Television audiences are deemed to know basic legal concepts like the difference between a civil and criminal case. See *id.*

³¹ "[A]s justice collided with the video age last week, the impact of TV in the Smith case was as hard to judge as the defendant's guilt or innocence." Richard Lacayo, *Trial by Television*, TIME, Dec. 16, 1991, at 30. The intense publicity surrounding the case spurred journalists to inquire whether a jury was needed at all since Americans were watching and weighing the evidence themselves. See David A. Kaplan et al., *In Florida, Trial by Media Fire: Who Needs a Jury When We Have TV?*, NEWSWEEK, Aug. 5, 1991, at 34.

³² See Dick Dahl, *Cable Goes to Court*, MASS. LAW. WKLY., Mar. 16, 1992, at B1 (finding that in addition to educating the public about the presumption of innocence and the state's burden of removing reasonable doubt, Court TV's live coverage of Smith's trial delivered "titillation, sex, violence and a glimpse into the lives of the rich and famous").

time.³³ While many of these new viewers may have anticipated watching the trial for only a few minutes, they soon found themselves glued to their seats—and their sets—for hours as the case unfolded.

By the fall of 1994 when Orenthal James ("O.J.") Simpson—a Heisman trophy-winner and Hall of Fame professional football player, advertising pitchman, and occasional movie star—went to trial to defend himself on charges that he brutally slayed his estranged ex-wife Nicole Brown Simpson and her friend Ronald Goldman,³⁴ Court TV was poised and ready. The network had worked diligently during the past three years to earn a strong reputation for serious reporting and good courtroom manners³⁵ and had attracted a devoted following.³⁶ During the course of the O.J. Simpson trial, Court TV's audience grew tremendously,³⁷ even beyond the confines of cable television as the major networks—NBC, ABC, CBS, and CNN—broke from traditional daytime programming to provide viewers with the same live coverage of the Simpson trial offered by Court TV. These networks used the same style of presentation pioneered by Court TV: unedited, gavel-to-gavel coverage, interspliced with expert commentary and on-screen graphics. In a sense, anyone who watched

³³ Court TV refuses to disclose its ratings for editorial reasons. However, CNN, which covered portions of the William Kennedy Smith trial, earned ratings four times higher than usual while covering the trial. See Robert S. Stephen, *Prejudicial Publicity Surrounding a Criminal Trial: What a Trial Court Can Do to Ensure a Fair Trial in the Face of a "Media Circus,"* 26 SUFFOLK U. L. REV. 1063, 1079–80 n.113 (1992); see also Lacayo, *supra* note 31 (reporting that the audience for CNN climbed to nearly 3.2 million viewers during the first week of the Smith trial—nine times what CNN usually draws during daytime hours).

³⁴ See *State v. Simpson*, No. BA097211, 1995 WL 704381 (Cal. Oct. 3, 1995).

³⁵ This is not to say the network has not made its share of mistakes. In June of 1993, a Court TV reporter working on a case in Austin, Texas, violated courtroom protocol by talking to jurors during a recess in a civil case. The reporter turned herself in and the judge ordered a mistrial. Court TV reported its own misconduct in an effort to maintain professionalism. See Camp, *supra* note 3. Furthermore, during the O.J. Simpson trial, Court TV's remote-controlled pool camera accidentally revealed the face of an alternate juror. Judge Lance Ito became so infuriated that he threatened to pull the plug on the cameras in the courtroom. "I have my credibility as a judge at stake," Ito said. See Douglas E. Mirell, *The Right Call on Keeping the Courtroom Camera*, available in 1995 WL 29623 (O.J. Comm.).

³⁶ "Hard-core regulars have made the channel 'part of their lives,'" says Merrill Brown, a senior vice president at Court TV. See Camp, *supra* note 3. "An odd combination of hard-nosed journalism, legal analysis for laymen and melodramatic daytime television, Court TV is an idea that wasn't supposed to work." *Id.*

³⁷ "Ratings were especially strong during the Simpson trial, although Court TV won't release specific numbers. More than 150 million people, or about 91 percent of all U.S. households, tuned in to the verdict on various channels, according to Nielsen figures." Castaneda, *supra* note 14.

the Simpson trial watched Court TV, proving that Court TV just about owns the television courtroom news business.³⁸

III. THE CONTROVERSY SURROUNDING COURT TV

A. *The Debate*

Steve Brill's vision in devising Court TV was to educate the public while entertaining them. Court TV's ability to entertain is certain; just ask anyone who watched the Simpson trial. As Oprah Winfrey described: "[Court TV is] the hottest soap going, filled with murder, nasty divorce, nail-biting suspense."³⁹ Court TV's ability to educate, on the other hand, is not so certain.⁴⁰ During his tenure as CEO, Brill argued that Court TV was fulfilling its educational mission by exposing the American public to the inner workings of the judicial system. Brill claimed that Court TV educates by making the courts accessible to virtually anyone with cable television. As the majority of American citizens never have anything but benign contact with the police and the courts,⁴¹ the perspective Court TV provides is crucial to understanding how the legal system really works. The unrehearsed, unscripted courtroom scenes shown on Court TV demonstrate to viewers that *L.A. Law* and *Law & Order*

³⁸ See Camp, *supra* note 3.

³⁹ The Oprah Winfrey Show, *Court TV's Most Memorable Video* at 1 (Harpo Productions Inc., Nov. 1, 1996) (on file with author) [hereinafter *Court TV's Most Memorable Video*].

⁴⁰ According to a 1994 national survey by the Times Mirror Center for the People & the Press,

43% of the American public watched at least four of the five most publicized trials in the last few years. The survey found that regular viewing of court trial proceedings may lead to a greater appreciation of the U.S. court system. Of the survey respondents who watch[ed] [the live trial] coverage offered by Court TV, 66% said their viewing gave them a greater understanding of the way the American court system works; and 49% said they have a better impression of the fairness of the judicial system as a result Thus, with Court TV we can hope for more intelligent and sophisticated jurors, and for participants who have a more realistic expectation of what the legal process is all about.

Watching the Real Life Drama, *supra* note 10.

⁴¹ "Because few individuals have direct experience with the system, the overwhelming number of citizens get their knowledge of the courts and crime through the media." Harris, *supra* note 1, at 786. For instance, only 27% of the individuals surveyed for this Comment had ever been involved in a lawsuit, and only 19% of them had ever testified as a witness in a deposition or trial.

are idealized portrayals of the way the system works; they are not reality.⁴²

Not everyone who has watched the channel agrees that the images on Court TV help viewers make this crucial distinction. Though Court TV guarantees "no neat endings, no resolution of difficult legal or moral questions,"⁴³ and though it gives the American public a better sense of the monotonous reality of the law and of lawyers in the courtroom, the network may still mislead the American public.⁴⁴ The critics argue that despite good intentions, Court TV only reinforces the unrealistic perception of the law fostered by popular culture.⁴⁵

B. *Evaluating the Criticisms of Court TV*

Some legal experts complain that Court TV falls short of its educational mission in five ways: (1) the network misleads the public into thinking that every legal dispute is resolved inside the courtroom, (2) the network showcases sensational trials only, (3) the network ignores the civil law, (4) a sizeable portion of the trials shown on the network involve murder or other violent crime, and (5) the network's emphasis on getting good ratings handicaps its educational aim.⁴⁶ To test the validity of these criticisms, a random survey of

⁴² As one editorial described:

The you-are-there sense probably is the most useful part of televising trials. For too long, legal proceedings have been shrouded in an unrealistic aura. And that exaggerated sense of reality has been perpetuated by entertaining but idealized television programs such as "Perry Mason" or the popular, if glitzy, "L.A. Law."

TV and the Courts, NAT'L L.J., Sept. 10, 1990, at 12.

⁴³ Lazerson, *supra* note 9, at 100.

⁴⁴ See Harris, *supra* note 1, at 820-21.

⁴⁵ The media justifies its involvement in titillating tabloid stories by framing them in a way that makes them seem important.

The Bobbits are not just an incredibly screwed-up couple, but a window on the battle of the sexes. The Menendez brothers are not just greedy psychopaths, but illustrations of the decline of individual responsibility. . . .

This is hoey. The Bobbit case is not about gender or class or the victim game or the marital rape epidemic. It is about two losers who made a lousy couple.

Let's just stop pretending that the proceedings we watch on Court TV and "Hard Copy" are important or instructive.

Michael Grunwald, *Trial by Media: We've Learned a Lot About O.J. Simpson During His Murder Trial. None of It Is Important*, BOSTON GLOBE, Oct. 10, 1994, at 31, 34.

⁴⁶ See generally Harris, *supra* note 1, at 788, 805 & n. 171, 824.

120 adults was conducted for this Comment⁴⁷ and the results are discussed below.

1. Criticism #1: Court TV's Focus on Criminal Trials Is Misleading

Court TV is criticized for covering trials almost exclusively when trials are actually atypical events in the criminal justice system.⁴⁸ "Adjudication occupies

⁴⁷ This survey does not purport to be a scientific poll, but rather is a random convenience sampling of 120 adults in Columbus, Ohio. Some 200 written questionnaires were distributed randomly among friends, their co-workers, and also to individuals in the Franklin County Courthouses in Columbus, Ohio. While several of those surveyed indicated that they had contact with the litigation process—as a party or as a witness—none of the individuals surveyed had any formal legal training and none worked in the legal profession. In total, 120 questionnaires were completed, offering a wide range of opinions about the American legal system. The responses were given under the condition of anonymity. The sample profile is as follows:

GENDER

Male: 28%

Race (for males)

34 White/Caucasian

1 African-American

1 Mixed-Race

Female: 59%

Race (for females)

61 White/Caucasian

6 African-American

1 Native American

1 Mixed-Race

1 Undisclosed

Undisclosed: 13%

Race (for undisclosed)

13 White/Caucasian

1 African American

EDUCATION (for all surveyed)

High School Graduate 96%

Vocational/Trade School 7%

Attended College 18%

Graduated College 61%

Post Graduate 23%

ANNUAL INCOME (for all surveyed)

\$30,000 or less 48%

\$30,000 - \$75,000 35%

\$90,000 - \$150,000 6%

\$200,000 or more 3%

undisclosed 8%

⁴⁸ See Harris, *supra* note 1, at 788. The focus on trials may create the impression that our system serves each and every defendant "a generous serving of due process," when in fact this is true in only a few cases. Most cases are resolved in a few minutes "of mumbled

only one point on the continuum of the criminal process," but right now "the rest of the process is invisible on Court TV."⁴⁹ Critics allege that Court TV's myopic focus on criminal trials gives viewers the mistaken impression that all legal issues—both criminal and civil—are resolved in a court of law,⁵⁰ when "[i]n reality, courts resolve most criminal [and civil] cases without an adversarial contest."⁵¹ Statistics reveal that, on average, between sixty-six to ninety-five percent of all criminal cases are resolved through plea bargains rather than trials.⁵² However, less than fifty percent of the adults surveyed for this Comment knew this fact, and less than fifty percent knew that most civil cases are also settled out of court.⁵³ The critics may be correct. Court TV's exclusive focus on trials may appear to mislead the public into thinking that all legal issues are resolved inside the courtroom.

questions and incantations in a crowded courtroom, before a judge taking plea after plea." *Id.* at 822.

⁴⁹ *Id.* at 788.

⁵⁰ Court TV's focus on trials makes the trial seem like the center of the legal universe when, in actuality, so little of the business of criminal justice is accomplished through trials. *See id.* at 821–22. Court TV does do a good job of providing the complete picture of the trial, but the trial is only one part of the process—the "very interesting part, the most potentially dramatic part, but only one part of the process." *Id.* at 824.

⁵¹ *Id.* at 788; *see also* Stephen C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 WIS. L. REV. 631, 636–37 (1994) ("In 1990, trials accounted for only 11% of all adjudications; the remainder were disposed of before trial. When fewer than one in twenty filed cases reach trial, one can no longer accurately refer to the federal district courts as 'trial' courts or their judges as 'trial' judges . . .").

⁵² "Over 95 percent of the guys who are in prison never see a trial, they've plea bargained." Larry Tye, *Inmates Find Simpson Trial Compelling on TV*, BOSTON GLOBE, May 1, 1995, at 1, available in 1995 WL 5936143. Other statistics suggest that only about 6% of all criminal cases make it to the trial stage and that the vast majority of cases are resolved without a trial. In 1988, an average of 66% of all criminal cases were resolved through plea bargains, while 20% were not resolved by trial but were dismissed. In the final analysis, more cases are resolved through plea bargain and dismissal than ever make it to trial. *See Harris, supra* note 1, at 822 (quoting U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FELONY SENTENCES IN STATE COURTS, 1988, BULLETIN NCJ 126923, at 6, tbls. 9 & 10 (1990)).

⁵³ In 1990, only 4.3% of the civil cases filed resulted in trials. Some commentators believe that the Federal Rules of Civil Procedure, adopted in 1938, have changed the mode of civil litigation. "Civil process based on the Federal Rules of Civil Procedure has largely replaced trials with motions." Yeazell, *supra* note 51, at 632–33 (footnote omitted). "Federal courts have almost gone out of the business of trying civil cases, but they have not stopped adjudicating them. Instead of trials, judges are making rulings on other dispositive motions: dismissals on the pleadings, summary judgments, and similar rulings that end a case." *Id.* at 636.

Court TV's obsession with the criminal trial would not completely defeat its educational purpose if those viewers watching criminal trials on television were actually learning something about criminal process and procedure. However, the survey results indicate that Court TV has not taught a substantial portion of its viewing audience the fundamentals of the criminal trial. For instance, forty-one percent of those surveyed for this Comment had no idea that "beyond a reasonable doubt" is a higher standard of proof than "by a preponderance of evidence," even after watching the Simpson trial on television, where the term "beyond a reasonable doubt" was used extensively by both the prosecution and the defense.⁵⁴ This fact provides strong support for the critics' charge that Court TV's criminal trial focus is entertaining but not very educational.

2. Criticism #2: Court TV's Focus on Sensational Trials Is Misleading

Court TV is a commercial venture, therefore the executives at Court TV have a partiality for televising sensational trials that will attract audiences, increase ratings, and generate advertising dollars.⁵⁵ The critics charge that this ratings motive encourages Court TV to abandon its educational mission in order to expose its audience to trials that contain a "larger than normal dose of weighty, topical issues" and that often involve celebrities, "lascivious detail,

⁵⁴ This statistic is particularly alarming considering 92% of the individuals surveyed watched at least a portion of the O.J. Simpson trial and invariably heard the term "beyond a reasonable doubt" used as the demanding standard of proof by which the prosecution would have to prove its case.

⁵⁵ According to Court TV, several factors are weighed when choosing which trials to air, "including how important and interesting the issues in the case are, the notoriety and newsworthy nature of both the case and the people involved, the quality of the 'story,' its educational value, and the expected duration of the trial." *Watching the Real Life Drama*, *supra* note 10. Furthermore, the network claims that they have no bias for covering trials based solely on how popular they are. "Court TV declines all requests to release the ratings of a specific trial, and its production staff is never privy to that information." *Id.*

Steve Brill specifically denied that Court TV prefers murder and violence over other types of cases. Several of the trials the network has covered in the past five years have included issues ranging from medical malpractice to discrimination in education. *See Camp*, *supra* note 3. However, in the network's attempt to educate the viewing public, there has never been any denial of the fact that entertainment must be part of the package if viewers are to be attracted. *See Harris*, *supra* note 1, at 805 n.171. As David Harris points out, if in one week Court TV is presented with "the opportunity to televise two cases about acquaintance rape, each of which would present equal opportunities for public understanding of the issue, the case with a better 'story,' perhaps involving celebrities, will more likely be televised." *Id.* at 805.

and grotesque or macabre trivia.”⁵⁶ Though these same critics will concede that many of these sensational trials have valuable lessons to teach, as the William Kennedy Smith case made the American public more aware of acquaintance rape⁵⁷ and the Jeffrey Dahmer case gave the public insight into the insanity defense,⁵⁸ they maintain that the very nature of the trials covered by Court TV can mislead viewers into thinking that all trials involve sensational fact scenarios and important social and legal issues. As such, Court TV perpetuates the *L.A. Law* myth; it does not dispel it. The critics appear to be wrong with this charge. While Court TV may favor the sensational trial over the realistically mundane one, the results of the survey indicate that viewers have not been misled by Court TV’s programming choices into thinking that the trials they see on television are the normal course of fare. In fact, sixty-four percent indicated that they understand that cases like the William Kennedy Smith case or the Jeffrey Dahmer case are the exception not the norm.

3. Criticism #3: Court TV Does Not Educate the Public About the Civil Law

Court TV is criticized for virtually ignoring the civil justice system. While many Americans may develop a working knowledge of the criminal justice system from television, books, and movies, these same resources do not give as

⁵⁶ *Id.* at 788.

⁵⁷ See *supra* note 31 and accompanying text. A young single mother accused William Kennedy Smith of raping her in 1991. See Cathy Booth, *Behind the Blue Dot*, TIME, Dec. 16, 1991, at 31. The woman gave ten hours of “bruising” testimony on camera which was televised to the cable world via Court TV. In order to protect her identity, her face was blacked out. See generally *id.*

For the accuser, the bitterest part of a rape trial is the experience of having her personal life spread before the court, and usually torn apart by the defense. Gavel-to-gavel coverage only magnifies the misery—perhaps even more so in this instance, as the accuser’s face is concealed on camera in a way that protects her identity but also turns her into a cipher.

Richard Lacayo, *Trial by Television*, TIME, Dec. 16, 1991, at 31.

⁵⁸ Serial killer Jeffrey Dahmer was convicted in 1992 of murdering 15 young men. Dahmer is perhaps most remembered for the disturbing fact that he ate portions of his victims’ bodies. See generally Alex Prud’homme, *The Little Flat of Horrors*, TIME, Aug. 5, 1991, at 26. Dahmer attempted to plead not guilty by reason of insanity when charged with the murders, but he was found sane and capable of standing trial. For an in-depth discussion of Dahmer’s attempt to use the insanity defense, see Anastasia Toufexis, *Do Mad Acts a Madman Make? Biography*, TIME, Feb. 3, 1992, at 17.

firm a grounding in the civil law. Critics charge that Court TV could step in and fill this void left by popular culture, but the network does not appear to be doing so. To determine whether viewers have developed a basic understanding of civil law, those surveyed for this Comment were asked to define two civil legal terms: "deposition" and "settlement," and one criminal term: "plea bargain." Not surprisingly, the majority of respondents could give an intelligent definition of "plea bargain,"⁵⁹ such as "to plead guilty to a lesser charge to avoid being tried for a more serious offense." But, few individuals were able to define accurately the civil law terms "deposition"⁶⁰ and "settlement."⁶¹ Some respondents confused "deposition" with "subpoena" and thought that a deposition was "an order to make you appear in court." Others were able to define deposition with varying degrees of accuracy. The majority of those who did supply a definition of deposition thought it was "a statement," which is correct, but few were able to expand the definition beyond that. Some knew that depositions are taken before trial to help determine the issues to be resolved in the courtroom, and defined it as "question and answer before trial to determine facts, lay groundwork for the attorney's use." Some knew that depositions are given under oath and defined the term as "a sworn statement," but few individuals were able to put all these elements together.

⁵⁹ Black's Law Dictionary defines "plea bargaining" as

[t]he process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.

BLACK'S LAW DICTIONARY 1152 (6th ed. 1990). While the respondents may have learned the term from watching Court TV, it is equally likely that their familiarity with the term "plea bargain" comes from their exposure to crime dramas on television. The program *Law & Order*, for example, an NBC prime time drama which traces a single criminal case from the police investigation into the crime to the subsequent arrest and eventual adjudication of the matter, regularly uses terms like "probable cause," "hearsay," "the Fourth Amendment," and "warrant requirement." See Harris, *supra* note 1, at 810.

⁶⁰ Deposition is defined as a "pretrial discovery device by which one party (through his or her attorney) asks oral questions of the other party or of a witness for the other party. . . . The deposition is conducted under oath outside of the courtroom. . . . A transcript—word for word account—is made of the deposition." BLACK'S LAW DICTIONARY 440 (6th ed. 1990).

⁶¹ A settlement, according to Black's Law Dictionary, is "an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; . . . [t]o fix or resolve conclusively; to make or arrange for final disposition Agreement to terminate or forestall all or part of a lawsuit." *Id.* at 1372.

Moreover, the respondents were perplexed by the term "settlement." The majority of those who attempted to define the term knew that the word refers to an agreement made between opposing parties: "An agreement of both parties to end and remedy the dispute" was a typical response. But, many did not realize that settlements are reached in civil cases, as opposed to criminal cases, which are resolved by plea bargain. Several people also thought a settlement was the end result of the trial, rather than a means of resolving disputes before going to trial. The fact that a significant number of the respondents were able to define "plea bargain," a criminal law term, but many were completely befuddled when asked to define civil legal terms like "deposition" and "settlement," suggests that the critics are right: Court TV should expand its focus beyond the criminal justice system to include some civil law if the network wants to give the public a well-rounded legal education.

4. Criticism #4: *The Trials Shown on Court TV May Perpetuate Myths About the Level of Violence in Society*

Because so many of Court TV's cases involve murder and other violent crimes, may viewers be misled into thinking that the world is a more violent place than it really is? Millions of Americans say that the crime rate in the United States is their biggest concern.⁶² As the public perception of the level of crime in society motivates an individual's most basic life choices, from where to live and raise a family to whom to vote for on election day,⁶³ the image of violence on television has a tremendously important impact on society. To test whether Court TV reinforces misperceptions from conventional television concerning the level of violence in society by singling out or highlighting violence, those surveyed were asked whether the trials they watch on television make them feel that the world is becoming more violent. Eighty percent of those surveyed responded "yes," the trials on television make them feel violence in the nation is escalating. In reality, the level of violent crime in this country may be dropping.⁶⁴ If voters cast their votes based on what they see on

⁶² "[T]he number of people naming crime as their most important issue skyrocketed, from 5 percent last May [1993] in an ABC/Washington Post poll to 30 percent last month [March 1994]." Brian McGrory, *Relationship of Crime News, Fear Is Debated*, BOSTON GLOBE, Apr. 4, 1994, at 1, available in 1994 WL 5968505.

⁶³ Rudolph Giuliani made crime and quality of life his major campaign themes when he ran for mayor of New York City in 1994. See Eric Pooley, *One Good Apple*, TIME, Jan. 15, 1996, at 55.

⁶⁴ See Harris *supra* note 1, at 813-15. Richard Lacayo reports that "[a]fter years of depressing and implacable upswing, serious crime is retreating all around the U.S." Richard Lacayo, *Law and Order; Crime Rates Are Down Across the U.S. Some—Dramatically*,

television, and if Court TV continues to focus on gritty trials which may reinforce the violent images shown on conventional television,⁶⁵ then viewers may be encouraged to act against their own best interests, for example, by voting to replace officials who have actually come up with viable plans to reduce crime.⁶⁶ I think it is possible that the erroneous perceptions about the level of violence in American society, generated by watching prime time dramas and potentially reinforced by Court TV, may end up hurting both the individual and society.

5. Criticism #5: The Ratings Motive Keeps Court TV from Being an Effective Educational Tool

Court TV is a profit-motivated, market-oriented organization. The

TIME, Jan. 15, 1996, at 48, 50. He states that in the nine cities with a population of more than one million, the decrease in violent crimes was 8% in 1994. Nationally, murders fell 12% in the first six months of 1995, and serious crimes of all kinds dropped one to two percent. Suburbs across the nation posted a decrease in violent crime of between four and five percent last year. *See id.*

Furthermore, the extensive coverage that murder and mayhem receive in newspapers and on television "twists the delicate concepts of context and reality beyond easy repair." The public has a "soaring fear of crime at a time when the FBI reports violent crime rates have leveled off and, in many areas, even dropped." McGrory, *supra* note 62. Robert Lichter, head of the Washington-based Center for Media and Public Affairs, a nonpartisan watchdog group, says: "It is not rocket science to discover why people see crime and violence in their living rooms, they think there is more of it out in the streets." *Id.* Similarly, James Alan Fox, the dean of Northeastern University's school of criminal justice, posits that a fascination with violent crime may be one reason people watch Court TV in the first place. "Why do people watch Court TV? People eat it up If we had a 50 percent reduction in the violent crime rate, people wouldn't know it." *Id.*

⁶⁵ "Nearly 41 percent of all television crimes are murders." George Gerbner, *Trial by Television: Are We at the Point of No Return?*, 63 JUDICATURE 416, 419 (1980). Even when the crime committed in television dramas is not murder, violent crimes like robbery and assault are favored. *See id.* This gives viewers a completely inaccurate portrayal of the level of crime in the country. The taking and destruction of property remain the most common crimes, making up approximately 60% of all criminal cases. *See id.*; *see also* YALE KAMISAR ET AL., MODERN CRIMINAL PROCEDURE 8-9 (7th ed. 1990).

⁶⁶ New York City Mayor Rudolph Giuliani and his former Police Commissioner William Bratton stated that better policing is the reason why major crimes—murder, rape, robbery, auto theft, grand larceny, assault, and burglary—dropped 17.5% in 1995 in the Big Apple. *See* Lacayo, *supra* note 64, at 51. The policing efforts in New York City alone accounted for 60% of the national crime decline in 1995. Bratton had set a goal of an additional 10% reduction in 1996. If this goal is met, New York City's crime rate will be half of what it was five years ago. *See* Pooley, *supra* note 63, at 55.

commercial nature of the network means that programming choices are driven by a ratings motive—the more people who watch, the more money the network makes. Court TV's underlying profit motive bothers some legal experts like Harvard Law Professor Alan Dershowitz.⁶⁷ Dershowitz agrees that televising trials is, in and of itself, a good idea, but he disagrees about the way Court TV does it. "Virtually all they cover is sex, gore and pornography,"⁶⁸ in an effort to boost ratings. Dershowitz claims that this is negatively impacting the American public. The network exploits human tragedy in the name of news.⁶⁹ Dershowitz suggests a far better idea would be to create a nonprofit, C-SPAN-style channel, which would cut out commercials, eliminate the ratings motive, and give viewers access to a broader range of cases than the ones currently selected by the editorial executives at Court TV.⁷⁰

⁶⁷ Dershowitz, a criminal defense attorney, was part of O.J. Simpson's "Dream Team" of high-priced defense attorneys.

⁶⁸ Calabresi, *supra* note 20, at 56.

⁶⁹ *See id.*

⁷⁰ Dershowitz would call this new network J-SPAN. This network would not focus on flashy cases but rather on cases that educate the public about the court system and the substantive issues that arise in the cases themselves. *See* Dahl, *supra* note 32. Dershowitz suggests that the trials should be broadcast without commentary by a not-for-profit educational company under the supervision of bar associations and law schools. *See* Harris, *supra* note 1, at 825 n.297 (citing Alan Dershowitz, *When Notoriety Is the Star*, WASH. TIMES, Feb. 11, 1992). Steve Brill says he finds Dershowitz's criticisms of Court TV and his proposal "an interesting statement from someone who's paying clients include Claus von Bulow, Leona Helmsley and Michael Milken." Dahl, *supra* note 32.

David Harris sees several problems with Dershowitz's scheme: (1) J-SPAN would need a much larger and much more expensive electronic network than C-SPAN because, unlike Congress, the nation's courtrooms are not all centrally located in Washington, D.C.; (2) Who would pay for and control J-SPAN? Government support might be necessary, and the prospect of government-run television covering the government is fraught with danger; and (3) J-SPAN does not offer an adequate solution to the problem of selecting which trials to cover; this is a crucial issue because of the number and variety of cases handled in the states, and there would be no less a need for critical selection of cases on J-SPAN than there is on Court TV now. *See* Harris, *supra* note 1, at 826. As an alternative to J-SPAN, Harris suggests that Court TV could be improved by dedicating some of its broadcast time to "Community Court TV." The network could carry a continuous feed of programming from local court systems. Rather than focus on the major stories across the country, Community Court TV would cover whatever matters surfaced in local courtrooms, from the mundane to the sensational. One regular day or time slot could be devoted to motion hearings, one to criminal pleas, and one to misdemeanor court. With Community Court TV the viewers would get the added bonus of seeing how the judges they voted into office are performing their duties. Viewers would also have an opportunity to assess the talents of local attorneys. *See id.* at 826-27.

Dershowitz is correct. Court TV is both good and bad.

The good news is you have [some] people coming to a better understanding of how the system works. The bad side is that, by the very nature of the medium, it's the extraordinary case, the unusual case, and to some extent the bizarre case that's going to get more attention. There will be some knowledge, but it will also be a distorted sense of how the system works.⁷¹

C. Putting Court TV to the Test

Court TV's ability to entertain and potential to educate was put to the ultimate test beginning in January 1995, when O.J. Simpson went to trial for the murders of his estranged ex-wife Nicole Brown Simpson and her friend Ronald Goldman. With viewers flocking in record numbers to television sets across the nation to watch the trial, Court TV played to its largest audience ever.⁷² The trial captivated the American public for more than ten months. The reading of the jury's verdict on October 3, 1995, acquitting Simpson of both murders, was viewed by people all across the nation.⁷³ "In the public mind, the Simpson trial was as real as it gets, the most revealing glimpse into the workings of the legal system that Americans have ever had."⁷⁴ The controversy generated by the trial and the verdict has prompted many people, both inside and outside the legal profession, to question the wisdom of courtroom television.

IV. CAMERAS IN THE COURTROOM

A. Reigniting the Debate

The public trial of O.J. Simpson in the homes of all Americans via television has almost single-handedly reignited the long-running debate surrounding cameras in the courtroom.⁷⁵ Initially the debate was fairly simple.

⁷¹ Strahinich, *supra* note 26, at 37-38.

⁷² See *supra* note 37 and accompanying text.

⁷³ See Patricia Edmonds, *The Moment*, USA TODAY, Oct. 4, 1995, at 7A (describing the reactions of a number of people who watched the televised verdict of the O.J. Simpson criminal case).

⁷⁴ Steven Keeva, *Circus-like Trial Colors Expectation*, A.B.A. J., Nov. 1995, at 48c.

⁷⁵ For an in-depth discussion of the renewed controversy over cameras in the courtroom, see Castaneda, *supra* note 14. Modern media coverage of criminal trials began in 1935 when Bruno Hauptmann was put on trial for kidnapping Charles Lindberg's infant child. See *New Jersey v. Hauptmann*, 180 A. 809 (N.J. 1935). The use of motion picture and sound recording devices created great chaos in the courtroom and disrupted the proceedings.

On one side of the issue were those who felt the Sixth Amendment right to a public trial⁷⁶ mandated the presence of cameras in the courtroom, while on the other side were those who felt that having cameras in the courtroom interfered with the defendant's right to a fair trial.⁷⁷ But as time passed and technology advanced, the debate became more complicated.⁷⁸ Today, proponents

Consequently, the American Bar Association enacted Canon 35 of the Canons of Judicial Ethics to control press coverage of criminal trials. Canon 35 stated:

Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs . . . and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.

62 A.B.A., ANNUAL REPORT 1134-35 (1937). The fact that Court TV, a network dedicated to televising trials, even exists today shows how much those who favor having cameras in the courtroom have achieved.

⁷⁶ "In all criminal prosecutions, the accused shall enjoy the right to a . . . public trial . . ." U.S. CONST. amend. VI. For an analysis of the Sixth Amendment argument, see Gregory K. McCall, Note, *Cameras in the Criminal Courtroom: A Sixth Amendment Analysis*, 85 COLUM. L. REV. 1546 (1985); David Shaw, *The Simpson Legacy: Obsession: Did the Media Overfeed a Starving Public?; Chapter Five: The Beginning; 'I Was Told Everyday That I'd Lead the News,'* L.A. TIMES, Oct. 9, 1995, at S1, S6-S7 (noting that many journalists argue that any journalistic threat to O.J. Simpson's right to a fair trial was more than offset by the ability of his high-priced team of attorneys and experts to use and manipulate the media to their client's advantage).

⁷⁷ The Supreme Court addressed the issue of television cameras in the courtroom for the first time in *Estes v. Texas*, 381 U.S. 532 (1965). There, the Court reversed a criminal conviction on the basis that live television coverage of a pretrial hearing on a motion to prevent telecasting was prejudicial and infringed on the defendant's Fourteenth Amendment due process right to a fair trial. See *id.* at 544. *Estes* did not amount to an absolute ban on photographic coverage of all criminal trials, but for the next eleven years, every state except Colorado prohibited such coverage.

The Supreme Court retreated from its holding in *Estes* sixteen years later when the Court decided *Chandler v. Florida*, 449 U.S. 560 (1981), which limited *Estes* to the technological circumstances that existed in 1962 when the case was tried. The Court held that televising a criminal trial was not a per se violation of the defendant's due process rights if certain procedural norms were followed. See *id.* at 579-83. Taken together, these cases illustrate that while there may not be a constitutional right to televise a trial, a reporter will only be denied permission to videotape a trial after a compelling showing that presence of the cameras in the courtroom would harm the rights of the accused.

⁷⁸ As a result of the Supreme Court's decision in *Chandler* and the continued media lobbying efforts, a flat ban on cameras in the courtroom exists only in the federal courts and in a handful of states.

supplement their Sixth Amendment argument with First Amendment arguments.⁷⁹ They argue that the free speech and press clauses affirmatively mandate access for television and still cameras in the courtroom. In the alternative, proponents suggest that "even if there is no affirmative constitutional right to have cameras in the courtroom, the policies that underlie the [F]irst [A]mendment favor camera coverage as a means of advancing public understanding of governmental functioning."⁸⁰ Without cameras in the courtroom, the real inner workings of the justice system remain shrouded in mystery.⁸¹ Furthermore, proponents maintain that the presence of cameras in the courtroom makes court officials more accountable for their behavior and thus encourages them to do their best job.

Advances in technology have forced those who oppose cameras in the courtroom to construct some new arguments as well. The old argument that "flashbulbs and microphones were inconsistent with the dignity and decorum of

⁷⁹ The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press" U.S. CONST. amend. I.

⁸⁰ McCall, *supra* note 76, at 1558-62. The Supreme Court expressed the same sort of belief in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980), where a plurality of the Court held that both the public and the press have a First Amendment right to attend criminal trials. Justice Brennan noted that public access to trials displays their fairness, prevents public resentment, dissuades judges from excess, and calls the attention of important, but unknown witnesses. *See id.* at 595-97 (Brennan, J., concurring). In a subsequent case, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606-07 (1982), Justice Brennan stated that "[w]here . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Id. But cf. Gil Santamarina, The Case for Televised Executions*, 11 CARDOZO ARTS & ENT. L.J. 101, 112 (1992) (noting that even in light of the *Richmond Newspapers* line of cases, several courts have maintained that the right of the press to access courtroom proceedings does not translate into a corresponding right to televise those proceedings). Santamarina argues that a balancing must be undertaken which weighs the "benefits of televising a proceeding against any negative impact such publicity would have on the trial." *Id.*

⁸¹ *See* JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE (1949). Frank's book provides a provocative discussion of the accrual of judicial power and authority through the use of powerful symbols. Frank argues that keeping the courts shrouded in mystery ill serves democracy. Much of Frank's anger is directed towards judges and their on-the-bench dress which Frank calls the "cult of the robe." *Id.* at 254. The problem, according to Frank, is that the robe may act as such a potent symbol of the judge's office that it may hide what really goes on in court. As a result, even an incompetent judge may garner undeserved respect. Maintaining the illusion of infallibility of courts and judges clouds public perception and hinders attempts at reform. *See Harris, supra* note 1, at 794-95.

judicial proceedings”⁸² has lost much of its force today with high-tech portable video cameras.⁸³ Instead, opponents argue that having cameras in the courtroom encourages showboating among the attorneys, the witnesses, and even the judge. They contend that the desire to “play to the camera” is so overwhelming that courtroom personnel stray from the task at hand—ascertaining the truth. Furthermore, opponents claim that the presence of the camera in the courtroom removes any shield of privacy or anonymity.⁸⁴ This removal of privacy may discourage witnesses from coming forward to testify if testifying means revealing intimate details or embarrassing or traumatic personal experiences before a television audience.⁸⁵ The end result is that those who are forced to testify in front of the camera may alter their testimony in a way that affects its accuracy and prevents justice from being served.⁸⁶ The Simpson trial stoked the fires of the debate as millions of people viewing the trial from the comfort of their own homes could finally see what effect television cameras have upon the administration of justice. And the opponents

⁸² McCall, *supra* note 76, at 1546.

⁸³ Technological advances have minimized the intrusive nature of having cameras in the courtroom. The cameras themselves may be completely concealed from view, and special lighting is often not required. Because of these advances, the defendant may be required to show how the presence of cameras violates his or her due process rights. *See Chandler v. Florida*, 449 U.S. 560, 581 (1981).

⁸⁴ During the O.J. Simpson trial, Pablo Fenjves testified about hearing Nicole Simpson’s dog barking on the night she and Ronald Goldman were murdered. More than a year later, “Fenjves is still greeted in supermarkets: ‘Hey, you’re the ‘plaintive wail’ guy!’ Tourists chase him down streets, and he has even received death threats. ‘It’s a pretty terrifying experience,’ he says.” Jill Smolowe, *TV Cameras on Trial: The Unseemly Simpson Spectacle Provokes a Backlash Against Televised Court Proceedings*, *TIME*, July 24, 1995, at 38.

⁸⁵ “The prospect of being at center ring in their own media circus may be discouraging . . . rape victims from coming forward.” Lacayo, *supra* note 57, at 31. The number of reported rapes in Palm Beach County, Florida dropped from 96 in April 1991, when the William Kennedy Smith story broke, to 68 in November 1991. *See id.*

⁸⁶ In his Note on cameras in the courtroom, Gregory McCall suggests that the presence of cameras is thought to affect witnesses in three ways: (1) the accuracy of their testimony, (2) their demeanor in the courtroom, and (3) their willingness to testify. McCall, *supra* note 76, at 1553. As the Supreme Court noted in *Estes*, “[witnesses] may be demoralized and frightened [while testifying], some cocky and given to overstatement” *Estes v. Texas*, 381 U.S. 532, 547 (1965). *See also* Shaw, *supra* note 76 (suggesting that the media coverage affected all witnesses—those who came forward and those who did not). *But cf.* STANDING COMMITTEE ON ASSOCIATION COMMUNICATIONS OF THE ABA, *THE RIGHTS OF FAIR TRIAL AND FREE PRESS: THE AMERICAN BAR ASS’N STANDARDS* 26 (1981) (noting that cameras are omnipresent in contemporary life, therefore it can no longer be maintained that the presence of a camera in a courtroom will distort the behavior of trial participants; “people encounter microphones and television cameras daily in banks, stores, and apartment buildings”).

seem to be winning. "For better or worse, the Simpson case is now part of our culture, along with a magnified sense that something is seriously wrong with our justice system, as demonstrated by the circus-like atmosphere of the trial."⁸⁷

B. *The Simpson Case Backlash*

Predictably, a good number of thoughtful people are reassessing their previously sanguine view of the role cameras should play in the courtroom.⁸⁸ Don Hewitt, the creator and executive producer of the top-rated news magazine *60 Minutes* is one of those thoughtful people. Hewitt is the naysayer's unlikely ally, as journalists are often the most staunch proponents for cameras in the courtroom. But the wackiness of the Simpson case made Hewitt change his position about letting the American public view the justice system from the comfort of their own living rooms. Hewitt believes cameras in the courtroom are destroying the law's dignity and, specifically in the context of the Simpson case, he believes cameras turned the trial into little more than show biz.⁸⁹ Hewitt contends that the camera is not only more powerful than the pen, but too powerful for the public good when it focuses on trials, or at least on murder trials. "A murder trial should not be America's entertainment."⁹⁰

Attorneys are also beginning to reassess the value of having the camera in the courtroom. "Lawyers are acting differently. Witnesses are acting

⁸⁷ Keeva, *supra* note 74, at 48c.

⁸⁸ See *Camera Shy?*, NAT'L L.J., Oct. 23, 1995, at A22. Defense attorney Gerry Spence, "recognized for his fringed buckskin jackets as much for his legal work," is an outspoken critic of courtroom cameras. See Castaneda, *supra* note 14. Mr. Spence believes

cameras change a court's dynamics and present a false picture of the U.S. justice system because typical trials, plaintiffs and defendants are rarely shown.

"We saw a showcase," Mr. Spence says referring to the theatrics during [the O.J. Simpson] trial. "America was deluded and will judge this justice system of ours based on that case.

....

The whole scheme of things gets out of balance. . . . America ends up believing we have nothing but criminals and shyster lawyers and loopholes in the law."

Id.

⁸⁹ See Mike Royko, *In O.J. Case, Verdict Is in on TV Cameras*, CHI. TRIB., June 22, 1995, at 3. Hewitt further stated: "I think Ito . . . should have realized that the camera was going to turn the courtroom into a movie set. You know, with Marcia Clark coming from hair and makeup and Johnnie Cochran coming from wardrobe. It's undignified." *Id.*

⁹⁰ Walter Goodman, *The Camera as Culprit? Look Again*, N.Y. TIMES, July 9, 1995, at B27.

differently. The judge is acting differently. And it's all because they're on national television," says Jack Litman, a New York criminal defense attorney who opposes cameras in the courtroom.⁹¹ "When you transfer the solemn and dignified arena of due process into an arena of entertainment, people will inevitably adopt the values and roles that an entertainment arena demands."⁹²

Having cameras in the courtroom does create the possibility that officers of the courts may be playing more to the cameras than acting in the best interests of their clients or in the best interest of justice. The Simpson case provides an excellent example. Many commentators suggest that no amount of advertising could buy the publicity that the defense and prosecuting attorneys in the Simpson case received daily, and that this exposure motivated the attorneys to show off because "being famous helps business."⁹³ And those who take the witness stand have just as much incentive as the attorneys to turn in an Oscar-caliber performance. The cast of characters to come out of the O.J. Simpson case is proof of this. Kato Kaelin,⁹⁴ O.J. Simpson's house guest, was able to boost his fledgling acting career, and to get his own book deal, his own radio show, and a regular spot on the touring comedy circuit for testifying about his connection to the sordid affair. Faye Resnik, a self-proclaimed best friend of Nicole Brown Simpson, became a best-selling author and a regular face in tabloids and on television for her role in the Simpson saga. She is reportedly now working on a self-help book for women.⁹⁵ And what about the twelve men and women who held O.J. Simpson's fate in their hands? The jurors were literally fighting off offers to "tell all" once they were freed from sequestration. As of November 1996, over forty books have been written about the case.⁹⁶

⁹¹ Michael Rezendes, *What's Law Got To Do With It? Lawyers Have Always Used Showmanship. Now They're Using Show Biz, Too*, BOSTON GLOBE, Mar. 26, 1995, at 73.

⁹² *Id.*

⁹³ *Id.* (quoting Yale University Law Professor Akhil Amar); see also Deborah Graham, *In the Simpson Spotlight*, A.B.A. J., Nov. 1995, at 49 (reporting that legal commentators found fame if not fortune from their media exposure during the Simpson trial).

⁹⁴ Kato Kaelin, a charismatic personality and a struggling actor, was a close friend of both O.J. and Nicole Brown Simpson. Kaelin was, in fact, O.J.'s house guest at the time of the murders of Nicole Brown Simpson and her friend Ronald Goldman. He was an important witness for the prosecution and was asked to testify as to O.J. Simpson's whereabouts on the night of the murders. Kaelin's inside connection to O.J. Simpson and Nicole Brown Simpson thrust him into the international spotlight overnight. The O.J. Simpson case made Kaelin "the world's most famous aspiring actor." *And Now for My Encore*, TIME, Apr. 3, 1995, at 22, available in 1995 WL 9020349.

⁹⁵ See *Court TV's Most Memorable Video*, *supra* note 39, at 3.

⁹⁶ See *id.* at 2. Not only have Simpson jurors penned "tell all" books, but the attorneys on the case have also written extensively about their experiences. Additionally, many critiques of the trial have been published.

Not only are journalists, legal practitioners, and scholars debating the issue of having cameras in the courtroom, but the general public is as well. Many insightful individuals realized long before the trial began that putting cameras into Judge Lance Ito's southern California courtroom to televise the O.J. Simpson trial would create total chaos.⁹⁷ More than 15,000 people wrote to Judge Ito from all over the country, urging him to keep cameras out of the courtroom.⁹⁸ Judge Ito had his clerk pack all of their letters in boxes and stack the boxes in his courtroom to let the lawyers and the TV audience know how a large segment of the American public felt about cameras being in his courtroom. Perhaps Ito's action should have been a hint to the nation as to the potential entertainment value of the trial. "If the cameras hadn't already been going, it's doubtful that the judge would have used the boxes of letters for a visual stunt."⁹⁹

In one public survey conducted after the trial, seventy-six percent of the respondents felt cameras should be banned from the nation's courtrooms in the future.¹⁰⁰ "The camera turns everyone watching into a 'juror' who gets to decide casually on guilt or innocence, without attaching to that decision the responsibility of conviction or acquittal. . . . The circus-like atmosphere makes everybody forget that these trials have real victims who have often suffered real

⁹⁷ Many others realized this after the fact. "With calls for judicial reform bellowing across the state in the wake of O.J. Simpson's controversial acquittal, Gov. Pete Wilson now wants to change California law and crack down on cameras in courtrooms." Howard Rosenberg, *The Simpson Verdict: Valuable Lessons of TV in Courtroom*, L.A. TIMES, Oct. 5, 1995, at A7. While appearing on *Leeza*, an NBC daytime talk show hosted by Leeza Gibbons, Wilson declared that cameras are "an external intrusion into the judicial process." *Id.*

⁹⁸ For a complete summary of Judge Lance Ito's decision to let the camera into his courtroom, see *Rivera Live* (CNBC television broadcast, Nov. 7, 1994), available in 1994 WL 3516850.

⁹⁹ Royko, *supra* note 89, at 3. Ito defended his decision after the verdict was read:

The American public got to see for themselves every day, all day, how this trial progressed, what the jury saw and what the jury wasn't allowed to see If you take the cameras out of the courtroom, then you hide, I think, a certain measure of truth from the public.

Ito Defends Decision to Allow Cameras, THE RECORD, Oct. 24, 1995, at A14.

¹⁰⁰ See *Do Cameras Belong in the Courtroom?*, GLAMOUR, Dec. 1995, at 107 [hereinafter *Do Cameras Belong in the Courtroom?*]. Despite this public sentiment, Court TV was granted access to 47 of the 49 trials for which it has applied, "a batting average higher than normal." Betty Streisand, *And Justice for All?*, U.S. NEWS & WORLD REP., Oct. 9, 1995, at 51.

wrongs.”¹⁰¹ Additionally, sixty-eight percent of those surveyed said the camera did not improve the public’s understanding of the judicial process. “The camera broadcasts more than the jury ever hears, confusing the viewing public. When their turn comes to serve on a jury, they’ll be that much more inclined to conjecture about what they’re *not* hearing, and it could negatively affect the way they look at testimony,” wrote one respondent.¹⁰²

Nevertheless, proponents steadfastly maintain that cameras do belong in the courtroom. If the bulk of the American public never experiences the judicial system firsthand, how can Americans decide whether the system is working or failing? The system only works when checks and balances are in place, and cameras provide an invaluable means by which the American public may gauge the system.¹⁰³ Professor Richard Parker of Harvard Law School says “[W]hat television has done is reveal the problem[s], not cause the problem[s].”¹⁰⁴ *New York Times* columnist Walter Goodman describes the fact remains that “courtroom showboating long preceded television, and the camera can expose pretense and pretension even as it encourages them.”¹⁰⁵

Wyoming trial lawyer Gerry Spence, who was a television mainstay during the Simpson trial, maintains that “there could not have been a better way for Americans to learn about the Constitution and the trial process than by watching

¹⁰¹ *Do Cameras Belong in the Courtroom?*, *supra* note 100, at 107.

¹⁰² *Id.*

¹⁰³ Since we live “in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government,” the press has a special role to play in furthering public awareness and understanding of the operations of the judicial system. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975). Because television is uniquely capable of giving a full picture of what goes on in the courtroom, the viewer’s ability to understand and evaluate the proceedings is enhanced. *See McCall*, *supra* note 76, at 1559. Courts throughout the nation take three general approaches to determining whether cameras may be in the courtroom when criminal trials are in session: (1) some enforce a total ban on television coverage, (2) others remove cameras whenever a trial participant objects, and (3) in other jurisdictions the judge has discretion to allow continued coverage even over a participant’s objections. Critics claim that these approaches fail to strike a well-reasoned balance between the public’s First Amendment interests and the defendant’s fair trial rights. *See id.* at 1562–64; *see also* Richard B. Kielbowicz, *The Story Behind the Adoption of the Ban on Courtroom Cameras*, 63 JUDICATURE 14, 23 (1979). Even if cameras are banned from the courtroom, the image of the legal system on television will continue. Because so much of the information contained in law entertainment programming is erroneous and misleading, the interests of justice are better served by keeping cameras in the courtroom and by allowing the American public to see justice as it really is, not the way it appears to be on *L.A. Law*. *See id.*

¹⁰⁴ Goodman, *supra* note 90 (quoting Richard Parker from his appearance on *Face the Nation*, July 2, 1995).

¹⁰⁵ *Id.*

the Simpson case.”¹⁰⁶ According to Spence, the Simpson case was not the proper test case; the problem with having cameras in the Simpson courtroom “‘is it taught the public about the American justice system with the worst possible example. It was like the devil teaching the 23rd Psalm, the Lord’s Prayer, and the Beatitudes.’”¹⁰⁷

In the final analysis, the presence of the television camera is not completely to blame for the carnival atmosphere of the Simpson trial. The Simpson affair was a sensation long before the trial began and would have remained so even without cameras in the courtroom. In fact, the civil case against Simpson, conducted in a southern California courtroom without the presence of cameras, illustrates that the Simpson affair remained front page news even without cameras.¹⁰⁸ “Lacking authentic video coverage, the tabloid shows . . . happily

¹⁰⁶ Keeva, *supra* note 74, at 48c.

¹⁰⁷ *Id.*

¹⁰⁸ Nicole Brown Simpson’s family and Ronald Goldman’s family both brought civil suits against O.J. Simpson. As the Simpson children, Sydney and Justin, were the only ones with legal standing to sue for the wrongful death of their mother, the Brown family sued for battery while the Goldmans sued for wrongful death. Los Angeles Superior Court Judge Hiroshi Fujisaki ruled that no cameras would be allowed in his courtroom during Simpson’s civil trial. Judge Fujisaki muzzled the attorneys with a strict gag order and forbade courtroom sketch artists from drawing during the proceedings. Judge Fujisaki’s desire to maintain control over the trial was in direct response to the zoo-like atmosphere of Judge Ito’s courtroom during Simpson’s criminal trial. “History will repeat itself unless the court acts to prevent it,” wrote Judge Fujisaki in a court order. Elizabeth Gleick & Elaine Lafferty, *A Simpson Remake, The Civil Trial Will Have Some New Witnesses—Including the Accused*, TIME, Sept. 23, 1996, available in 1996 WL 10668788.

The jury returned a verdict in favor of the Brown and Goldman families on February 4, 1997, awarding \$8.5 million in damages to compensate the Goldman family for the wrongful death of their son. See Elaine Lafferty, *The Inside Story of How O.J. Lost the Second Time Around*, TIME, Feb. 17, 1997, available in 1997 WL 8543138. The jury later awarded \$25 million in punitive damages to be shared by the Browns and the Goldmans. See Linda Deutsch, *Defense Attorneys Demand New Civil Trial*, DAYTON DAILY NEWS, Apr. 5, 1997, available in 1997 WL 3933732. In the wake of the civil verdict, proponents for cameras in the courtroom have continued to push their agenda. “Had the Big Eye been on the case, . . . blacks and whites alike would have seen the holes in Simpson’s alibi; consequently, there would be less racial division over the justness of the verdict,” said *The New York Times*. Perry Morgan, *The Jury Is In: TV and Court Don’t Mix*, VIRGINIAN-PILOT & LEDGER-STAR, Feb. 16, 1997, available in 1997 WL 6394821. “Columnist William Raspberry thinks we would have learned more and believed more in the integrity of the judicial system ‘if we could have seen the second trial for ourselves.’” *Id.* Critics maintain that television cameras blur the focus. “A public obsessed with what it thinks of a verdict has little regard for what the jury thinks. And it is to that very obsession that television plays.” *Id.*

Nevertheless, Court TV anchor Rikki Klieman says the Simpson civil trial was a zoo

make do with lurid dramatizations or re-creations. And with or without courtroom coverage, gossip columnists, supermarket sheets, television news magazines and their whole tribe would keep churning away"¹⁰⁹ In fact, the presence of the camera adds something positive to the mix. Televised broadcasts of the Simpson trial not only heightened general awareness about the workings of the criminal courts but highlighted many of the system's shortcomings as well. Arthur Miller, Harvard Law Professor and Court TV commentator, points out "never before [the O.J. Simpson case on television] have so many thought so deeply about how the law works, about things like the complete discontinuity between justice and wealth. That's of value."¹¹⁰ Proponents maintain that despite the Simpson backlash, cameras have earned a place in the courtroom as "public access to proceedings that affect all of us can only benefit society and, just maybe, lead to a better-informed citizenry."¹¹¹

C. The Perception of Justice in America After the O.J. Simpson Trial

With millions of people tuning into the Simpson trial every day, Court TV had the potential to educate and to reshape a large segment of the American public's views about the legal system. The Simpson trial was an atypical trial; commentators are split in opinion over whether the trial offered the public any

even without the cameras. See *Court TV's Most Memorable Video*, *supra* note 39, at 16. She believes that cameras should have been in the courtroom for the civil case as well "because people ought to see the difference between the civil case, the criminal case, and those who want to see [O.J. Simpson] testify ought to have the right to do it." *Id.*

¹⁰⁹ Goodman, *supra* note 90. Columnist Mike Royko asks:

Would the trial have been any different if Judge Ito had listened to the grass-roots wisdom of [the 15,000 people who wanted cameras banned from his courtroom]?

Probably. Without the cameras, the coverage would have been provided by newspapers and brief spoken reports on TV. The written or spoken word doesn't have the drama of lawyers snarling at each other, members of the victims' families dabbing their eyes, or O.J. shaking hands with a star-struck prosecution witness.

The judge might have been more inclined to crack the whip at stalling lawyers and preening witnesses. The lawyers might have decided not to waste their blustery acting talents on so small a live audience.

And it's doubtful that jurors would have been so eager to con and lie their way onto the panel if they didn't sense that they were going to be part of a major television production, giving them the opportunity to cash in.

Royko, *supra* note 89.

¹¹⁰ Rezendes, *supra* note 91, at 73.

¹¹¹ *TV and the Courts*, *supra* note 42, at 12.

valuable lessons in American jurisprudence.¹¹² Walter Goodman, columnist for the *New York Times*, believes the O.J. Simpson trial taught viewers many valuable things. The trial provided tremendous insight into courtroom rules and procedures, DNA, and physical evidence.¹¹³ Moreover, Goodman feels that it taught the public that few defendants can afford a score of custom-tailored lawyers, and that few trials, even in California, go on for months. Paul Rothstein, Georgetown University Law School professor, seems less enthusiastic about the impression the trial made on the American public. He says the trial left viewers with the feeling that "[i]f you talk long and hard enough about something, and have enough money, you can raise reasonable doubt about anything—including the sun rising tomorrow[.]"¹¹⁴

The adults surveyed for this Comment expressed the same conflicting views about the Simpson trial as an educational tool. While fifty-seven percent of those surveyed indicated that they did learn something about the legal system by watching the O.J. Simpson trial, only a handful of them feel that they learned something substantial.¹¹⁵ Of that handful, some claimed to have learned the

¹¹² As Douglas Mirell described:

The Simpson prosecution raises a raft of extraordinarily important issues of local and national concern. . . . [such as] [t]he horror of domestic violence, including the extent to which society permits the cycle of abuse to feed upon itself[;] [t]he existence of racism within the criminal justice system, and its possible impact upon the attitudes of and work performed by individual officers[;] [t]he impact of wealth upon a defendant's ability to obtain a fair trial or to "buy" more justice[;] [a]nd, equally important, the indigent defendant's inability to purchase the kind of lawyering skills and investigative efforts necessary to create a reasonable doubt.

Mirell, *supra* note 35, at *2.

¹¹³ See Goodman, *supra* note 90. Many prison inmates were equally fascinated with the technical aspects of the trial, from DNA testing to analyses of fingerprints and footprints—techniques that were often absent from their bare-bones hearings and all of which, they feel, may help them win appeals someday. See Tye, *supra* note 52.

¹¹⁴ Henry J. Reske, *Verdict on Simpson Trial*, A.B.A. J., Nov. 1995, at 48. Notwithstanding, Rothstein did use the trial to teach a class in evidence to his law students. See *infra* note 149 and accompanying text.

¹¹⁵ A telephone survey done by Times Mirror in January of 1994 provided a similar result. Times Mirror asked: "As a result of watching Court TV do you think that you have a greater understanding of the way the American court system works, or haven't you learned much about the legal system itself from Court TV?" Of the 1,207 adults who responded, 66% said they felt that by watching Court TV, they have a greater understanding of the legal system, while 31% said that watching Court TV has not taught them anything. The survey was conducted by Princeton Research Associates for Times Mirror, January 27–30, 1994, available in Westlaw, POLL database. The results were released February 4, 1994.

basics—everything from pretrials and side bars to the procedures for DNA testing and the process for admitting evidence. One male respondent wrote that the Simpson trial taught him to respect “the power of the judge and his ability to influence things.” Additionally, one African-American woman who responded to the survey commented that watching the Simpson trial on television taught her how the system *really* works. “Money still talks,” she wrote, adding that she learned “where the trial is held could make you a free person or a person that goes to jail.” Another woman indicated that the Simpson trial taught her “how important one’s choice of words are” in the courtroom.¹¹⁶

Clearly there were valuable lessons to be learned from the Simpson case. But many of the adults surveyed for this Comment indicated that all the Simpson trial taught them was that the American legal system is in desperate need of an overhaul. One woman sarcastically commented that before the Simpson case she never realized “how important the elements of fashion (Marcia Clark’s hair) and image (Johnnie Cochran, et al.) are to legal outcomes and process.”¹¹⁷ Another white female respondent wrote that watching the trial left her with the negative impression “that lawyers will use any chicanery at their disposal to manipulate the jury and the evidence to secure an acquittal for their client.”¹¹⁸ Another disillusioned respondent commented that the trial

¹¹⁶ Roger Cossack, a seasoned criminal trial lawyer who served as a deputy district attorney for Los Angeles County and as a former Assistant Dean of the University of California and who now hosts CNN’s legal program *Burden of Proof*, agrees with this respondent:

Every law student wishing to be a trial lawyer should watch a video of Barry Scheck examining Dennis Fung several times. Scheck’s complete mastery of the facts as well as his knowledge of the process of collecting DNA proved devastating to poor Mr. Fung. . . . Unlike the prosecution, which never seemed to be able to reduce the case to a simple theory, Scheck time and again would repeat “Garbage in, Garbage out,” a simple, but brilliant phrase that made it easy for the jury to disregard the DNA evidence if it wanted to.

Roger Cossack, *What You See Is Not Always What You Get: Thoughts on the O.J. Trial and the Camera*, 14 J. MARSHALL J. COMPUTER & INFO. L. 555, 561 (1996).

¹¹⁷ “Even home viewers perceive the impact [of the camera] as they monitor Marcia Clark’s Di-like makeover, with hair that’s gone from shaggy mane to Madison Avenue sleek and a once frumpy wardrobe that now rivals Grace Van Owen’s on *L.A. Law*.” Smolowe, *supra* note 84.

¹¹⁸ Charles Rosenberg, a Harvard Law School graduate who now works as a litigator in Los Angeles and who once served as a legal consultant to the hit television series *L.A. Law*, provided expert on-line commentary about the O.J. Simpson case for Westlaw. Mr. Rosenberg gauged national sentiment about the legal system in the wake of the Simpson trial

showed "what poor judgeship is . . . too irregular, too emotional, too self-conscious. I learned that an emotional appeal (Johnnie Cochran) wins over a jury, not evidence. I learned that MONEY is required for justice."¹¹⁹ One white man reported that the trial showed him "generally that the court system and processes are far out of touch with commonsense and reason. Legal maneuvering/manipulation has become an art form." Finally, one white woman concluded dishearteningly, "our judicial system works for some and not for others. It became a case about celebrity and race and somehow justice became irrelevant."¹²⁰

In general the adults surveyed for this Comment share this woman's belief that the case was essentially about money and power, and that if O.J. Simpson had not been wealthy and did not have a score of high powered attorneys and expert witnesses, he would have been convicted of the murders of Nicole Brown Simpson and Ronald Goldman. Over seventy percent of those surveyed believe the legal system favors the rich over the poor,¹²¹ while only fourteen

via faxes and online networks. The comments from viewers echo many of the opinions uncovered in the survey done for this Comment. "Justice can be bought," said one viewer. "The trial is costing the public too much," said another. "Lawyers on both sides are engaged in tricky behavior." Rosenberg, *supra* note 11, at *3. Rosenberg believes that these remarks suggest that most people do not understand the adversarial system. "Or at least they do not understand that, within certain ethical boundaries, lawyers are permitted or even required to advance arguments for their clients even though the arguments may be less than fully persuasive." *Id.*

¹¹⁹ Los Angeles District Attorney Gil Garcetti expressed the same viewpoint in a post-trial news conference that the verdict was "based on emotion that overcame reason." Reske, *supra* note 114, at 48.

¹²⁰ Yale Kamisar, a constitutional and criminal justice professor at the University of Michigan Law School, has expressed a similar opinion, accusing both the prosecution and the defense in the Simpson case of overzealousness. *See id.* The prosecution appeared too combative when its proper role is to be unbiased. He criticized the defense for appealing to the jurors to send a message of disapproval to the police when he told them in his summation to "stop the cover-up." The "message of that argument essentially was that jurors have the power to nullify the law . . ." *Id.* at 48a-48b.

¹²¹ David Harris described that

[t]he same laws must govern all individual cases, whether the defendant is rich or poor. If negative misperceptions about the justice system abound, people understandably lose confidence in the system's ability to deal fairly with them. Conversely, damage can also result from erroneous positive perceptions. That is, if people think that the criminal justice system works well and fairly when it does not, they may fail to recognize the need for critically important changes or reform.

Harris, *supra* note 1, at 790-91.

percent of those surveyed believe that money plays no part in legal matters.¹²² Additionally, almost seventy percent of the respondents believe that the rich can buy justice, and seventy-six percent believe the rich have better attorneys.¹²³ Finally, forty percent of the respondents reported that after watching the Simpson trial on television, they have lost confidence in the American legal system, and ten percent indicated that after the trial they have absolutely no confidence in the system. Only one respondent maintained that she actually has more confidence in the judicial process after watching the Simpson trial on television. "The system guarantees a right to a defense. I may not agree with the decision. It may seem an aberration of the right and wrong; however, the system idealized seems to protect the innocent," she wrote.

In the year since Simpson was acquitted, the legal profession has become keenly aware of the public's dissatisfaction with the legal system. "The profession is aware of that reaction and is trying to explain, rationalize and otherwise justify itself[,] by reinforcing that the Simpson case was anything but ordinary, says John Langbein, a Yale Law School professor.¹²⁴ "That's an example of damage control you find within the bar when it doesn't want to face

Further, Harris recognizes that if people see the courts as ineffective and unwilling to impose just punishment on wrongdoers, self-help and vigilantism, which the courts were meant to replace, become more attractive alternatives. *See id.* (directing readers to GEORGE P. FLETCHER, A CRIME OF SELF DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL 2-3 (1988) (describing that Goetz shot and killed four black teenagers in a New York City subway car when they were attempting to mug him and Goetz was regarded by many as a modern day hero)).

¹²² As a matter of comparison, one in four Americans told *U.S. News & World Report* in a recent poll that the Simpson trial shows there is no justice in America, while 85% of all Americans said the trial proves there is a different justice for those who have money and those who do not.

More than 6 in 10 African-Americans say the Simpson trial shows there is a very different justice for African-Americans and whites, while 70 percent of whites contend there is no difference in the justice meted out. Finally, 60 percent of African-Americans say that police often frame innocent people, compared with only 24 percent of whites who think the same thing.

Streisand, *supra* note 100, at 50. The poll was conducted by Celinda Lake of Lake Research and Ed Goetas of the Tarrance Group during July 17-25, 1995. Some 1,000 registered voters with an oversample of 45 African-American voters were polled. The margin of error: plus or minus 2.9 percent. *See id.* at 47.

¹²³ One woman commented that a lawyer's reputation is crucial because "better lawyers sometimes influence jurors with their status."

¹²⁴ Keeva, *supra* note 74, at 48c.

the real message."¹²⁵ The real message is that public respect for lawyers and the criminal justice system has dropped dramatically since the trial.¹²⁶ As Americans are losing confidence in the justice system based on what they see on television,¹²⁷ the future of the camera in the courtroom may be jeopardized by the public's reaction to "[a] system consistently seen as unjust will eventually lose the allegiance of its citizens. If people perceive the courts as less than fair decision makers, the moral force courts depend on to ensure compliance with decisions they make diminishes."¹²⁸

D. *The Future of Cameras in the Courtroom*

Whether cameras will be welcome in courtrooms in the future is uncertain. In the wake of the O.J. Simpson criminal trial, judges have banned cameras from televising the trial of Susan Smith, the woman accused and convicted of drowning her children in a South Carolina lake,¹²⁹ from televising the retrial of

¹²⁵ *Id.*

¹²⁶ See Reske, *supra* note 114, at 48d.

¹²⁷ The results of a survey done by Times Mirror in January of 1994 illustrate a very different perspective. The respondents were asked: "Do you have a better or worse impression of the fairness of the court system as a result of watching Court TV?" Of the 1,207 individuals who responded, 49% said they have a better impression of the fairness of the system, while 28% said they have a worse impression of the fairness of the court system. Nineteen percent indicated that they have neither a better nor worse impression of the system's fairness, while 4% surveyed either refused to answer or did not know how they felt. The survey was conducted by Princeton Survey Research Associates for Times Mirror, January 27-30, 1994, available in Westlaw, POLL database. The results were released on February 4, 1994. Perhaps the difference in opinion may be due to O.J. Simpson's acquittal in October of 1995. The survey for this Comment was done in December of 1995.

¹²⁸ Harris, *supra* note 1, at 790. Harris points to the rioting in Los Angeles in the aftermath of the acquittal of four white Los Angeles police officers who were accused of using excessive force against black motorist Rodney King as an example of what can happen when people lose confidence in the system. Many of the rioters expressed the feeling that the Rodney King trial was a prototypical example of the fact that African-Americans could not expect justice at the hands of the white-run, racist criminal justice system. This perception intensified as four black men accused of beating Reginald Denny, a white man, nearly to death during the riots that followed the Rodney King verdict were convicted by the same system. See *id.* at 790 n.35. One wonders if the Simpson acquittal will deepen this racial divide?

¹²⁹ See *State of South Carolina v. Susan Vaughn Smith*, Nos. 94-GS-44-906 & 94-GS-44-907 (S.C. Ct. Gen. Sess. 1995), available in 1995 WL 789245 (providing a transcript of the verdict and sentencing in the case). At the Smith trial, "the soft whirr of cameras was replaced by a far quainter sound—the scratches and squeaks of 10 sketch artists, plying their trade with color pencils and markers." Smolowe, *supra* note 84, at 38.

the Menendez brothers,¹³⁰ who were convicted of murdering their wealthy Beverly Hills parents; and from televising the trial of three-time felon Richard Allen Davis, who was convicted for the 1995 kidnapping and murder of Polly Klaas, the twelve year old girl who was abducted from her home in peaceful Pentaluma, California.¹³¹ And finally, cameras were banned from the Los Angeles County courtroom where the battery and wrongful death suits brought by the Brown and Goldman families against O.J. Simpson were tried.¹³² Why the ban? Perhaps the judges presiding over these matters felt these cases had already generated too much pretrial publicity, that the salacious detail and the intense emotions surrounding these cases might make things worse for all parties involved if cameras were admitted into the courtroom. Or, maybe these judges learned from Judge Ito's experience that in opening up one's courtroom to the public eye, one becomes the focus of intense public scrutiny and the target of a great deal of criticism; and, unlike Judge Ito, they did not wish to be placed under the microscope.

Despite this growing sentiment against the presence of the camera in the courtroom, the fact that the eye of the camera has been opened on the workings of the government through C-SPAN and local programming makes it difficult to justify closing the camera's eye to the workings of the judicial system

¹³⁰ Van Nuys Superior Court Judge Stanley M. Weisberg said that keeping the cameras out of the courtroom where the Menendez brothers are being tried will reduce the risk of the unsequestered jurors and alternates being tainted by exposure to media accounts of the trial. "The court concludes that the enduring intensity of interest in this case immeasurably increases the likelihood that jurors will be exposed to potentially prejudicial electronic media coverage about this case outside the courtroom," wrote Weinsberg in his ruling. Ann W. O'Neill & J. Michael Kennedy, *Judge Bars Television Cameras from Courtroom for Menendez Retrial*, L.A. TIMES, Oct. 7, 1995, at B1.

¹³¹ As Jill Smolowe described:

Superior Court Judge Lawrence Antolini, who is currently presiding over the California trial of the accused murderer of Polly Klaas, has imposed a gag order on lawyers and restricted TV coverage to the first five minutes of each court day. . . . [H]e vowed, "Nothing like the O.J. Simpson case is going to happen in my courtroom."

Smolowe, *supra* note 84. Journalists fear that the decisions to bar cameras from the Smith and the Davis trials sets a dangerous precedent. "The O.J. thing is an aberration," says Wade Ricks, a CNN field producer. "Trials can be handled in a thoughtful manner so that they instruct, enlighten and entertain[.]" he continued. And Jane Kirtley of the Reporters Committee for Freedom of the Press maintains the importance of having cameras present. If the American "public [had] not seen the shaky prosecution case in the William Kennedy Smith rape trial, the subsequent acquittal would have provoked an outcry." *Id.*

¹³² See *supra* note 108 and accompanying text.

now.¹³³ "You can't ban television any more than you can ban the ocean,"¹³⁴ says Akhil Amar, a Yale University law professor. "The genie cannot be put back in the bottle."¹³⁵ Experts have suggested many methods by which judges may accommodate the camera and protect the dignity of the legal process.¹³⁶

One suggestion is that judges should follow the "Rule of Inverse Publicity," which dictates that the greater the public interest is in a particular trial, the less compelling the case is for allowing cameras in the court.¹³⁷ If followed, the rule would not absolutely preclude coverage of trials that have captivated the American public, as experts suggest that the print media may be relied upon to "pounce" on any case whose facts and whose participants possess mass appeal, making television coverage relatively unnecessary. One weakness with this alternative is that a lower percentage of the population would receive this information as the number of American citizens who get their news and information from the print media is far less than those who get their information from television.¹³⁸

The debate over cameras in the courtroom will not die. Advocates for the camera's presence remind judges that if cameras are completely banned from the nation's courtrooms, the legal system will once again be shrouded in

133 As Charles Rosenberg described:

For almost a year, watching and arguing about the Simpson murder trial has replaced baseball as the national pastime. Three cable channels (Court TV, E! Entertainment Television and Cable News Network) have been providing gavel-to-gavel coverage to an audience of from 5 million to 15 million people daily.

Do not expect those people to return quietly to channel surfing now that they know the difference between a real trial and "Perry Mason."

Rosenberg, *supra* note 11, at *1.

¹³⁴ Rezendes, *supra* note 91, at 73.

¹³⁵ *Camera Shy?*, *supra* note 88, at A22.

¹³⁶ In fact, in some states, administrative procedures have been implemented to help the trial judge make the decision about media coverage. In Wisconsin, for example, coordinators are assigned to each judicial administrative district to work with the judges in implementing camera guidelines. These media coordinators are responsible for handling requests for coverage by media representatives, notifying trial participants of the request, and acting as the clearinghouse for objections. The judge's role in the preliminary stage, then, is limited to reviewing affidavits, drafting the appropriate order, and in the instances where the witness's objection to the presence of cameras is questionable, calling for a pretrial hearing. See McCall, *supra* note 76, at 1568 (directing readers to Wis. Sup. Ct. R. 61.02(1) (West Supp. 1996) which empowers the freedom of information council to designate such coordinators for each judicial administrative district).

¹³⁷ See *Camera Shy?*, *supra* note 88, at A22.

¹³⁸ See *supra* note 2 and accompanying text.

mystery. This mystery is not beneficial, for it is only to "the extent that we know how our institutions do and do not work, [that] we can make better judgments about them and about what actions citizens and public officials might take to change them."¹³⁹ To return to the world before Court TV, where the majority of Americans got all or most of their information about the legal system from entertainment programming or from small thirty-second stories on the evening news, would be a giant step backwards. For a democracy to survive and flourish, the citizens of that democracy must know what their public servants are doing and how well they are performing the jobs with which they have been entrusted. By bringing cameras into the courtroom, the American public can see firsthand the shortcomings of the judicial system and can work collectively to improve the system.¹⁴⁰ "It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts."¹⁴¹

But as the opponents have always maintained, bringing cameras into the courtroom does not come without a cost. The presence of the camera allows the American public to become an unwelcome thirteenth juror.¹⁴² *60 Minutes* producer Don Hewitt cautions against this:

¹³⁹ Harris, *supra* note 1, at 789-90. As Harris notes, voters can have a significant impact on how the justice system works. If people feel judges ought to sentence offenders more severely, they can elect representatives who will enact laws to accomplish this goal. If a community is concerned about domestic violence or drunk driving, they can elect officials who will pass laws to reflect this concern. Cameras in the courtroom help shed light on how social issues are being resolved by the justice system. These "eyes" in the courtroom enable voters to determine whether judges who are elected because they pledge to be tough on crime are actually practicing what they preach. *See id.*

¹⁴⁰ "How can you write anything serious about the racial divide the [O.J. Simpson] case suggests, burden of proof, guilt beyond a reasonable doubt and say the reason we know all about these things—the live camera—should be eliminated[.]" says ABC analyst Jeff Greenfield. *The Simpson Legacy/Los Angeles Times Special Report; Trial & Error: Focus Shifts to a Justice System and its Flaws*, L.A. TIMES, Oct. 8, 1995, at S1.

¹⁴¹ Harris, *supra* note 1, at 795 (quoting JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 2-3 (1949)).

¹⁴² As Charles Rosenberg described:

[S]ince there are no eyewitnesses to the crime, everyone who watches the drama unfold feels empowered to render judgment—to assess which characters are lying and which are telling the truth, to evaluate each "clue" as it appears on television and, finally, to render a strongly held judgment on O.J. Simpson's guilt or innocence.

When you go to trial, you should be judged by a jury of your peers who sit there all day long and listen to all the evidence, [and who] weigh all the evidence. You shouldn't be tried in a court of public opinion where there's a guy who's not watching until his wife says, "Hey, Harry, come in here, they've got the socks on now." We go in and out of this thing because somebody says, "Hey, this is the good part." That's not how you should be tried.¹⁴³

Hewitt is right. Court TV allows us to view the judicial process in its entirety, but because so few of us actually have the time or the patience to sit and watch an entire trial from opening statement to closing argument, very few of us have earned the right to proclaim guilt or innocence, and very few of us have the ability to intelligently assess the success or failure of the system based on such a limited viewing of that system. But because Court TV gives us a seat in the front row, we feel empowered to make these determinations.¹⁴⁴ As a case in point, sixty-one percent of the individuals surveyed for this Comment claimed to have watched the Simpson trial only occasionally, and yet based on this limited viewing, the majority of them felt qualified to denounce the American justice system when O.J. was acquitted.

The willingness of so many Americans to write off the entire justice system based on the O.J. Simpson case is troubling.¹⁴⁵ This pervasive dissatisfaction

¹⁴³ Royko, *supra* note 89.

¹⁴⁴ As Roger Cossack described: "Each of us became the thirteenth juror, each of us made up our mind and each of us had a vote. But, what we saw and heard depended upon our life experiences." Cossack, *supra* note 116, at 559. Columnist Perry Morgan reminds us of the disparity between the courtroom jury and the television "jury." The courtroom jurors

must attend to all the dull stuff—bits and pieces of evidence that may fit into a pattern persuasive of guilt or innocence. The television audience gets the juicier morsels of testimony but sops also on gossip, prophecy, hunches, hearsay, guesstimates, and oracular pronouncements from far-flung lawyers, special pleaders and reputed experts prattling 'round the clock.

Free of the disciplines surrounding a jury and the burden of flesh-and-blood deciding, the audience-as-jury can be as cocksure and as righteous in its judgments as it chooses—including its judgments on the judicial system.

Morgan, *supra* note 108.

¹⁴⁵ Lawrence Friedman noted that

[t]he public seems . . . to have a love-hate relationship with law. It sees law as a bag of tricks, a bottomless pit of artifice and legalism; but it also sees law as a shining sword of justice, a powerful weapon of public purpose. Law is, indeed, one of the very foundation stones of liberty.

with the system may stem from two things: (1) from the unrealistic perspective many people have of the justice system that is based on the legal system as it is depicted in popular culture, or (2) from the individual's own life perspective. If nothing else, the Simpson case showed us that "while we may all watch the same thing, we don't see the same thing."¹⁴⁶ For many people the result of the trial was a foregone conclusion. "Polls tell us that most white Americans had concluded that Simpson was guilty before the trial even began, while black Americans were suspicious about the evidence from the start. . . . [W]hat we saw and heard depended upon our life experiences."¹⁴⁷

While the current system is certainly not perfect, if Americans continue to believe in its underlying policy—that society would rather see a guilty person go free than to imprison an innocent individual—then the system is not completely flawed either. Before deciding that cameras in the courtroom are poisoning justice, and before denouncing the system as hopelessly flawed, members of the American public should find some time to tune into Court TV and watch a less lengthy, less controversial trial in its entirety; for it is only after extensive exposure to the system that one can make intelligent decisions about the viability of that system.¹⁴⁸

V. CONCLUSION

Court TV has the power to reaffirm our faith in the judicial system, and it has tremendous potential to educate us in the process.¹⁴⁹ Analyzing the success

Friedman, *supra* note 8, at 1599.

¹⁴⁶ Cossack, *supra* note 116, at 555.

¹⁴⁷ *Id.* at 555, 559.

¹⁴⁸ Charles Rosenberg similarly concluded as follows:

If . . . the legal profession and the organized bar want the public to be truly informed rather than just inflamed about the issues in criminal procedure, the educational campaign needs to begin—the one that will demonstrate that the adversarial system, ugly as it often is to watch, is not a sausage factory, but the very basis of liberty.

Rosenberg, *supra* note 11, at 76.

¹⁴⁹ While Court TV's ability to educate the general public about the legal system is uncertain, Court TV offers tremendous educational material for lawyers. For instance, Georgetown University Law School professor Paul Rothstein taught an evidence class based on the O.J. Simpson trial. *See Reske, supra* note 114. Additionally, the Franklin County Trial Lawyers Association in Columbus, Ohio, sponsored a continuing legal education seminar in December 1996 entitled "Trial Techniques from the Files of Court TV." The day-long seminar focused on developing and improving trial techniques using video excerpts from Court TV trials as the seminar "textbook." TRIAL TECHNIQUES FROM THE FILES OF COURT

or failure of Court TV's attempt to educate the American public about the legal system in the context of the O.J. Simpson case may be presumptively unfair since many who tuned into the coverage of the Simpson case probably did not do so in an effort to learn more about the legal system; for "it is no secret the case's attraction had much more to do with celebrity, sex and bloody bodies . . . How many people read [a gossip column] or tune to *Hard Copy* for lessons in the rules of evidence?"¹⁵⁰ But it was not until the O.J. Simpson trial captured the attention of the American public that the potential impact of Court TV could be completely understood. Many Americans have developed a passion for watching trials. Now that the Simpson criminal trial is over, those who are truly addicted to watching trials on television will be tuning into Court TV to get their litigation "fix." Both of Steve Brill's goals for Court TV may finally be realized.

The survey results indicate that if Court TV shifts the focus away from the trial and begins offering live coverage of criminal defendants as they enter their pleas, of motion hearings, and of arbitration and mediation sessions, then Court TV may be more effective in educating its viewers about the myriad ways in which legal issues are resolved in this country. Moreover, by revising the focus to include the civil law, perhaps in the form of televised divorce proceedings or personal injury trials, Court TV may actually arm viewers with more helpful information, considering that most people who have contact with the legal system have contact on the civil rather than criminal level. Finally, if Court TV strives to equalize the time spent on non-violent, sensational trials, the myths about the level of violence in society may be dispelled, and the American electorate may become better informed. Court TV will always be entertaining. It is voyeurism, pure and simple. With a few minor adjustments, Court TV certainly can be an effective teaching tool as well.

TV (on file with author).

¹⁵⁰ Goodman, *supra* note 90.